

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7734 OF 2007

Suresh Bafna .. Petitioner
Versus
Commissioner of Customs and
Central Excise (Appeals) & Ors. .. Respondents

Mr. Atish D. Roy for the Petitioner.

Mr. A.S. Rao with Prasad Vyas with Mr. H.P.
Chaturvedi for the respondents.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 18TH OCTOBER, 2007.

P.C. :

1. Rule. Heard forthwith.

2. The petitioner has come against the order dated 29-8-2007. The petitioner had preferred an appeal before Commissioner (Appeals) along with an application for condonation of delay. After filing of the appeal the only communication received by the petitioner dated 29-8-2007, records as under: "since the appeal sent by you has been received in this office after more than four years, no action can be taken on it."

3. The appeal preferred was not a communication addressed to the Commissioner (Appeals), it was a statutory appeal under the provisions of the Act. Once the appeal is preferred and the Commissioner

(Appeals) is appropriate authority, he must follow the procedure for hearing and disposing the appeal. If the Commissioner is of the opinion that the appeal is barred by limitation, an order can only be passed after giving opportunity to the petitioner. In the instant case, no such opportunity has been given nor an order passed in the appeal, except that of present communication dated 29-8-2007.

4. Considering the above, the impugned communication dated 29-8-2007 is set aside. The Commissioner (Appeals) is directed to issue notice to the petitioner and thereafter to dispose of the appeal. All questions are left open including the question as to whether the appeal is barred by limitation. Counsel for the petitioner states that the address for the service of notice will be address given in the petition. The Petitioner to appear before the Commissioner (Appeals) on 29-10-2007 at 11.00 a.m. and thereafter the Commissioner (Appeals) to give further directions for the date of hearing.

5. Rule is made absolute accordingly with no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)